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PARKHURST AND WENDEL

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LAW OFFICES

PARKHURST & WENDEL, L.L.P.

SUITE 210
1421 PRINCE STREET
ALEXANDRIA, VIRGINIA 22314-2805
TELEPHONE 703-739-0220
FACSIMILE 703-739-0229
E-Mail parkhurst@worldnet.att.net

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OCT 30 2003

To: Examiner Anne Marie Grunberg Date: 10/29/03
Group Art Unit 1661
Company: U.S. PTO Fax No.: 872-9307

From: Charles A. Wendel

Re: U.S. Patent Appln. Serial No. 09/902,750
Robert Noodelijk - Our Ref: CHRE:111

7 pages including this cover sheet were transmitted. If you do not receive all pages, please let us know by return facsimile.

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Dear Examiner Grunberg:

On October 28, 2003 we filed a Request for Reconsideration in the USPTO Mail Room.

Transmitted herewith are courtesy copies thereof and of our firm's return postcard receipt bearing the USPTO Mail Room date stamp confirming that filing.

This copy is presented for your convenience to expedite your consideration of this case. We await receipt of a Notice of Allowability or Advisory Action.

Respectfully submitted,

PARKHURST & WENDEL, L.L.P.

OCT-30-2003 09:52

PARKHURST AND WENDEL

703 739 0229 P.09/13

CHRE:118	
Atty. Docket No. <u>REQUEST FOR REGISTRATION</u>	
Description: _____	
Inventor(s): <u>Mr. Robert Noodelijk</u>	
Title (new cases): <u>CHRYSANTHEMUM PLANT NAMED 'ETNA'</u>	
Attorney: <u>CAW/ch</u> Serial No. <u>09/923,534</u>	
Paper(s) Filed <u>October 28, 2003</u>	
Date(s) Satisfactory <u>November 25, 2003 NOA still due</u>	
N.D.D.: <u>c/u: 11/18 Call Extr</u>	

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OCT 28 2003
P A T E N T & T R A D E M A R K O F F I C E
BW

PATENT
REPLY AFTER FINAL REJECTION
EXPEDITED PROCEDURE EXAMINING GROUP 1600

MAIL STOP BOX AF

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Group Art Unit: 1661

Serial No.: 09/902,750 **Examiner:** Anne Marie Grünberg

Filed: July 12, 2001

FOR: CHRYSANTHEMUM PLANT NAMED 'CREAM ELITE REAGAN'

REQUEST FOR RECONSIDERATION

MAIL STOP AF
Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Applicant requests reconsideration of the Final Rejection mailed August 26, 2003 in view of the following remarks.

The continued rejection of claim 1 under 35 USC 102 as allegedly anticipated by PBR application No. NL PBR CHR3118 in view of the admission that 'CREAM ELITE REAGAN' was first offered for sale in The Netherlands in November 1999 is respectfully traversed.

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realistic and is also the period commonly accepted for the application of Plant Breeders Rights in other UPOV countries.

While applicant realizes that plant protection in the United States is different from the plant protection afforded in other UPOV countries in that the United States uses a legal (patent) system rather than a Plant Breeders Right approach, one should take into consideration the common purpose of both systems, namely the protection of the right of the breeder of his or her product. For the international community of breeders, it would be useful if the grace period in the United States comported with that of other UPOV countries.

Further, applicant responds to the Response to Arguments appearing at pages 2 to 5 of the Final Rejection thusly.

The published PBR application, while a printed publication, does not constitute prior art under 35 USC 102 because the publication by the USPTO's own admission is not enabling. If the publication is not enabling, it does not qualify as prior art under 35 USC 102. The reference alone cannot be a proper basis for rejection here.

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Sales abroad also are not prior art within the definition of 35 USC 102 (as they are not patent-defeating acts) and the combination of two non-prior art events, regardless of the degree of sophistry involved, does not make a proper rejection under 35 USC 102.

Applicant also respectfully submits that the holding in In re LeGrice supports patentability here and the PBR document is not prior art for the reasons given above.

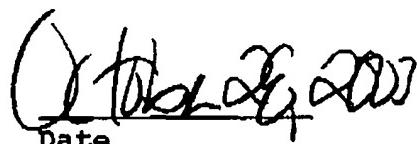
Applicant also respectfully points out that the panel in Ex parte Thomson itself distinguished the facts before it from that of In re LeGrice and neither decision provides proper support for the USPTO position here.

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Reconsideration of the rejection is earnestly solicited.

Respectfully submitted,

PARKHURST & WENDEL, L.L.P.


Date

Charles A. Wendel
Registration No. 24,453

CAW/ch

Attorney Docket No.: CHRE:111

PARKHURST & WENDEL, L.L.P.
1421 Prince Street, Suite 210
Alexandria, Virginia 22314-2805
Telephone: (703) 739-0220